

1 E. MARTIN ESTRADA
United States Attorney
2 SCOTT M. GARRINGER
Assistant United States Attorney
3 Chief, Criminal Division
ELI A. ALCARAZ (Cal. Bar No. 288594)
4 Assistant United States Attorney
Deputy Chief, Riverside Branch Office
5 3403 Tenth Street, Suite 200
Riverside, California 92501
6 Telephone: (951) 276-6938
Facsimile: (951) 276-6202
7 Email: Eli.Alcaraz@usdoj.gov
FRANCES S. LEWIS (Cal. Bar No. 291055)
8 Assistant United States Attorney
Deputy Chief, General Crimes Section
9 312 North Spring Street
Los Angeles, California 90012
10 Telephone: (213) 894-4850
Facsimile: (213) 894-0141
11 Email: Frances.Lewis@usdoj.gov

12 Attorneys for Plaintiff
UNITED STATES OF AMERICA
13

14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,
17 Plaintiff,
18 v.
19 JOHN JACOB OLIVAS,
20 Defendant.
21

ED CR No. 18-231-JGB

UNITED STATES' MOTION IN LIMINE TO
ADMIT PRIOR STATEMENTS OF
DEFENDANT JOHN JACOB OLIVAS;
EXHIBITS 1-6

Hearing Date: October 17, 2022
Hearing Time: 2:00 P.M.
Location: Courtroom of the
Hon. Jesús G. Bernal

22
23 Plaintiff United States of America, by and through its counsel
24 of record, the United States Attorney for the Central District of
25 California and Assistant United States Attorneys Eli A. Alcaraz and
26 Frances S. Lewis, hereby files its Motion in Limine to Admit Prior
27 Statements of Defendant John Jacob Olivas.
28

1 The United States met and conferred with defense counsel Meghan
2 Blanco by phone on September 16, 2022, about the substance of this
3 Motion. The United States understands the defense opposes the
4 Motion.

5 This Motion is based on the attached memorandum of points and
6 authorities and accompanying Exhibits 1-6, the files and records in
7 this case and reporter's transcripts of the trial, and such further
8 evidence and argument as the Court may permit.

9 Dated: October 3, 2022

Respectfully submitted,

10 E. MARTIN ESTRADA
11 United States Attorney

12 SCOTT M. GARRINGER
13 Assistant United States Attorney
 Chief, Criminal Division

14 /s/
15 _____
 ELI A. ALCARAZ
 FRANCES S. LEWIS
 Assistant United States Attorneys

16 Attorneys for Plaintiff
17 UNITED STATES OF AMERICA
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Table of Contents

MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND.....	2
A. Motions in Limine.....	2
B. Trial Testimony.....	3
C. State Change of Plea Hearing.....	3
III. ARGUMENT.....	6
A. This Court Has Already Ruled that Evidence about the Underlying Conduct is Admissible at Trial.....	6
B. Defendant's Statements are Admissible Under Rule 801(d) (2).....	7
C. Rule 410 and California's People v. West Decision Do Not Affect the Analysis Here.....	8
D. Revised Statements Comply with Any Rule 403 Balancing....	11
IV. CONCLUSION.....	13

Table of Authorities

Page(s)

Cases

<u>In re Alvernaz,</u> 2 Cal.4th 924 (1992)	8
<u>People v. West,</u> 3 Cal.3d 595 (1970)	8, 10
<u>United States v. Bautista,</u> 989 F.3d 698 (9th Cir. 2021)	8
<u>United States v. Castro-Cabrera,</u> 534 F. Supp. 2d 1156 (C.D. Cal. 2008)	7
<u>United States v. Kerik,</u> 531 F. Supp. 2d 610 (S.D.N.Y. 2008)	8
<u>United States v. Ramos-Atondo,</u> 732 F.3d 1113 (9th Cir. 2013)	11
<u>United States v. Vidal,</u> 504 F.3d 1072 (9th Cir. 2007)	8

Statutes

18 U.S.C. § 242	1
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Rules

Fed. R. Evid. 410(a)(1)	7
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant John Jacob Olivas ("defendant") used his position and
4 power as a federal law enforcement agent to sexually abuse N.B. twice
5 and attempt to sexually abuse K.L., his prior intimate partners. In
6 2021, defendant stood trial on three federal charges arising from
7 these sexual assaults, in violation of 18 U.S.C. § 242. On December
8 15, 2021, this Court declared a mistrial after the jury deadlocked on
9 all three counts. The retrial is presently set for October 25, 2022.

10 Before the first trial, this Court ruled that the United States
11 could present evidence at trial that defendant physically assaulted
12 N.B. in November 2012, pointed his HSI-issued service weapon at his
13 father during an argument in November 2012, and intimidated N.B. in
14 March 2013 by threatening to send her father sexually explicit photos
15 and videos of her. The United States did not seek to introduce
16 defendant's convictions for this conduct -- only the underlying facts
17 -- unless defendant testified. During trial, N.B. testified about
18 each of these incidents, and she was cross-examined extensively.
19 Defendant also introduced related testimony in his case-in-chief,
20 challenging N.B.'s credibility on these topics.

21 This motion in limine seeks to admit defendant's statements from
22 his state change of plea hearing in September 2015 in which he
23 admitted this conduct was factually true.¹ Defendant's statements
24 are admissible under Federal Rule of Evidence 801(d)(2). Because the
25 United States does not seek to admit the fact of his convictions, the
26

27 ¹ The United States did not obtain the actual transcript from
28 defendant's change of plea hearing until December 4, 2021, which was
after the first trial had commenced. Thus, the United States did not
try and introduce these statements during the first trial.

1 United States proposes a stipulation with minor non-substantive
2 revisions to remove any information that might indicate to the jury
3 that they were made as part of a state criminal proceeding. Defense
4 counsel has objected to the admission of any of these statements on
5 the grounds that they were allegedly part of a "People v. West" plea
6 with the State of California. Because the statements are defendant's
7 own admissions about relevant conduct in this case and were part of a
8 guilty plea hearing, not a People v. West proceeding, the Court
9 should grant the United States' motion in limine and permit it to
10 introduce defendant's prior statements during the retrial.

11 **II. FACTUAL BACKGROUND**

12 **A. Motions in Limine**

13 During the state prosecution that preceded the federal case,
14 defendant pled guilty to (1) assault with a gun against his father,
15 in violation of California Penal Code ("CPC") § 245(a)(2);
16 (2) infliction of corporal injury resulting in a traumatic condition
17 upon a cohabitant, N.B., in violation of CPC § 273.5(a); and
18 (3) witness tampering, in violation of CPC § 136.1(b)(1) in Riverside
19 County Superior Court. Before the first trial in this case, the
20 United States filed a motion in limine to admit the underlying
21 conduct related to those convictions in its case-in-chief, and made
22 clear that it would only seek to introduce the convictions themselves
23 if defendant testified. (Dkt. 80 at 9.)

24 During the pretrial conferences on November 15, 22, and 29,
25 2021, the Court orally granted the United States' motion in limine as
26 it related to these three incidents involving N.B.²

27
28 ² The United States ordered, but has not yet received, transcripts from the pretrial conferences.

1 **B. Trial Testimony**

2 Victim N.B. testified at trial between December 7-9, 2021. N.B.
3 testified about all of the incidents that the United States sought to
4 introduce in its in limine motion that were the basis of defendant's
5 prior guilty pleas. These included an incident in early November
6 2012 where N.B., defendant, defendant's mother, and defendant's
7 father got into an altercation where defendant pointed his HSI-issued
8 service pistol at various individuals. (RT 12/8/21 at 152-58.) N.B.
9 testified that defendant's son, Jaykb, was in the house at the time.
10 (RT 12/8/21 at 153, 155.) Her testimony included information about a
11 "bear hug incident" in early November 2012, where defendant squeezed
12 her so hard that she heard a rib "pop." (RT 12/8/21 at 160-74.) Dr.
13 Jessie Rollins testified about medical treatment he gave to N.B.
14 following the bear hug. (RT 12/8/21 at 9-34.) N.B. was crossed on
15 this incident. (RT 12/8/21 at 43-48.)

16 Additionally, N.B. testified that defendant sent her sexually
17 explicit videos and attempted to intimidate her in March 2013. (RT
18 12/8/21 at 184-88.) N.B. was cross examined extensively at trial,
19 including on this "blackmail." (RT 12/9/21 at 59, 61-62.) Defendant
20 also called his now-adult son to testify about the argument between
21 defendant and his father (RT 12/10/21 at 9-10), but said that he did
22 not believe anything more serious (i.e., defendant pointed his gun at
23 anyone) happened because "I feel like I would have knowledge of
24 that." (RT 12/10/21 at 35-37.) His testimony called into question
25 the reliability of N.B.'s testimony.

26 **C. State Change of Plea Hearing**

27 As set forth in the United States' original motion in limine, in
28 September 2015, defendant entered three guilty pleas in People v.

1 Olivas, in the Superior Court of California, County of Riverside.
2 (Ex. 1 (change of plea hearing certified transcript).) In
3 particular, he pled guilty to (1) assault with a firearm, in
4 violation of CPC § 245(a)(2), (2) corporal injury to a co-habitant,
5 in violation of CPC § 273.5(a), and (3) dissuading a witness, in
6 violation of CPC § 136.1(b)(1). (Ex. 1 at 4-7; Ex. 2 at 2 (Felony
7 Plea Form); Ex. 3 at 1 (Abstract of Judgment).)

8 Certified conviction records from defendant's case were obtained
9 and produced to defendant early in discovery in this case. In
10 preparing for the first trial in this case, the United States ordered
11 transcripts from defendant's change of plea and sentencing hearings.
12 Because of the age of the case, those transcripts were not received
13 until December 4, 2021, after the first trial had commenced. The
14 transcripts were produced to defense counsel on December 5, 2021.

15 The transcripts reflect that during the change of plea hearing,
16 the Court was advised that the parties had negotiated a resolution
17 that would result in the dismissal of certain counts with a reduced
18 sentencing recommendation from 14.4 years to four years. (Ex. 1 at
19 2.) Defendant was asked if he had read and initialed the felony plea
20 form to show that he "understood everything that followed [his]
21 initials." (Ex. 1 at 3-4.) In particular, he initialed next to
22 "Factual Basis: I agree that I did the things that are stated in the
23 charges that I'm admitting." (Ex. 2 at 2 (emphasis added).)

24 Defendant's case minutes for this state prosecution note that he pled
25 guilty to these three crimes. (Ex. 4 at 1, 7.)

26 Defendant was advised about the immigration "consequences of
27 your pleading guilty today" and he was asked if his initials, date,
28 and signature meant that he understood "his legal and constitutional

1 rights, but that he wish[ed] to waive them, pleading guilty a
2 violation of [CPC] § 248(a)(2), assault with a firearm; . . . a
3 violation of [CPC] § 273.5 Subdivision (a), corporal injury on a
4 cohabitant; and Count 5, as amended, 136.1(b), dissuading a witness."
5 (Ex. 1 at 3-4.) Defendant responded, "Yes, your Honor." (Id.) The
6 charges were then read individually, and defendant responded "guilty"
7 when asked how he wished to plead to each count. (Id. at 6-7.)

8 Defense counsel was asked if he joined, but added that he did
9 so:

10 [W]ith some trepidation inasmuch as my client has been
11 conflicted most of the morning. I agree with his decision,
12 in terms of I think he made the decision that's in his best
13 interests at this time. I would also indicate that he did
14 that partly under People versus West, based on what the
15 Court -- discussions we had off the record, rather than
16 running the risk of going to trial and being convicted on
17 more charges, and spending a greater deal of time
18 potentially in prison. So, for that, I concur with the
19 plea, Your Honor.

20 (Id. at 7.) The prosecutor then read the factual basis for each
21 count.

22 Concerning the § 245(a)(2) violation for assault with a deadly
23 weapon, defendant was asked, "Is it true that on or about March 3rd,
24 2012, in the County of Riverside, State of California, you did
25 willfully and unlawfully commit an assault upon Johnny Olivas with a
26 firearm?" and defendant responded, "True." (Ex. 1 at 8.) Concerning
27 that question, the parties agreed that there was supposed to be an
28 amended fact that the conduct took place on November 3, 2012. (Ex. 1
at 5 ("The 245(a)(2) that's currently alleged in the amended
complaint says March 22nd, 2013. It should be November 3rd,
2012."))

1 Concerning the § 273.5(a) violation for domestic violence,
2 defendant was asked, "Is it also true that on that same date,
3 November 3rd, 2012, in the County of Riverside, State of California,
4 you did willfully and unlawfully inflict a corporal injury resulting
5 in a traumatic condition upon Jane Doe, with the initials N, as in
6 Nancy; B, as in boy, that person being your former cohabitant?" and
7 defendant responded, "True." (Ex. 1 at 8.)

8 Concerning the § 136.1(b)(1) violation for witness intimidation,
9 defendant was asked, "And is it also true that on or about March 1st,
10 2013, through March 31st, 2013, in the County of Riverside, State of
11 California, you did willfully and unlawfully attempt to - or
12 intimidate and dissuade Jane Doe, with the initials N.B., from giving
13 testimony in a criminal proceeding based on the fact that you asked
14 her to not come forward with the information regarding the crimes
15 that you committed against her by threatening to send a text video to
16 her father of sexual acts?" and defendant responded, "True." (Ex. 1
17 at 8-9.)

18 The court then tentatively accepted the pleas pending
19 sentencing. Defense counsel clarified for defendant that this meant
20 that if the Court received new information and no longer wanted to
21 approve the agreement, "you are not stuck with your guilty pleas and
22 then a much harsher sentence, you get the benefit of your agreement."
23 (Id. at 10.)

24 **III. ARGUMENT**

25 **A. This Court Has Already Ruled that Evidence about the** 26 **Underlying Conduct is Admissible at Trial**

27 After extensive briefing and argument, this Court already ruled
28 that the underlying conduct concerning defendant's assault of his

1 father with a firearm, prior abuse of N.B., and witness intimidation
2 is admissible at trial in this case. Defendant's uncharged abusive
3 conduct toward N.B. or when N.B. was present is inextricably
4 intertwined with the allegations of sexual assault in this case, or
5 at a minimum, admissible under Rule 404(b). (See generally Dkt. 80.)

6 **B. Defendant's Statements are Admissible Under Rule 801(d)(2)**

7 Defendant's statements admitting that he engaged in this
8 underlying conduct are logically also admissible as classic non-
9 hearsay admissions by a party opponent. Rule 801(d)(2) subsections
10 (A) and (B) provide that a statement that is offered against an
11 opposing party that (A) was made by the party in an individual
12 capacity or (B) is one the party manifested that it adopted or
13 believe to be true, is not hearsay. When defendant responded,
14 "True," during his plea colloquy to the deputy district attorney's
15 recitation of the factual bases for defendant's three guilty pleas
16 (Ex. 1 at 8-9), he made statements in an individual capacity and
17 adopted the facts to be true. He further initialed his felony plea
18 form--"Factual Basis: I agree that I did the things that are stated
19 in the charges that I am admitting." (Ex. 2 at 1.)

20 Defendant's factual statements at his plea colloquy are
21 admissible, and based on the testimony at the prior trial, they are
22 relevant and highly probative. Although Federal Rule of Evidence 410
23 bars the introduction of statements made for a guilty plea that was
24 later withdrawn or a nolo contendere plea, see Fed. R. Evid.
25 410(a)(1), (2), there is no such prohibition for statements made at a
26 guilty plea hearing, and such statements are routinely admitted.
27 See, e.g., United States v. Castro-Cabrera, 534 F. Supp. 2d 1156,
28 1159-60, 1161-62 (C.D. Cal. 2008) (admitting defendant's statements

1 from his plea colloquy that he was a citizen of Mexico; "While a
 2 statement is inadmissible when made at a plea colloquy for a plea of
 3 guilty later withdrawn or a nolo contendere plea, a statement is
 4 admissible when made during a plea colloquy when a defendant pleads
 5 guilty. . . . Thus, Defendant's statements at the plea colloquies
 6 were he pled guilty are admissible."); United States v. Kerik, 531 F.
 7 Supp. 2d 610, 618-19 (S.D.N.Y. 2008) ("Rule 410 is meant to protect a
 8 defendant who participates in an unsuccessful plea discussion from
 9 later having his admissions used against him. In this case, the
 10 defendant pleaded guilty, and therefore, Rule 410 does not apply.")

11 **C. Rule 410 and California's People v. West Decision Do Not**
 12 **Affect the Analysis Here**

13 Defense counsel has objected to the admissibility of defendant's
 14 statements at his change of plea hearing on the grounds that the plea
 15 was not a guilty plea, but was instead a "People v. West" plea, or in
 16 other words, a plea of nolo contendere. Defendant's plea colloquy
 17 admissions are in no way nolo contendere pleas.

18 For background, Rule 410 provides that "a statement made during
 19 a proceeding on [a nolo contendere plea]" is "not admissible against
 20 a defendant." In California, such a nolo contendere plea is
 21 generally governed by People v. West, 3 Cal.3d 595, 599 (1970)
 22 ("[D]efendant, with the consent of the district attorney, pleaded
 23 nolo contendere"). The California Supreme Court has
 24 characterized a West plea as a plea of nolo contendere that "does not
 25 establish factual guilt." United States v. Vidal, 504 F.3d 1072,
 26 1089 (9th Cir. 2007) (citing In re Alvernaz, 2 Cal.4th 924, 932
 27 (1992)) abrogated on other grounds recognized by United States v.
 28 Bautista, 989 F.3d 698 (9th Cir. 2021).

1 Defendant's convictions here, however, are guilty pleas, not
2 West or nolo contendere pleas, and are therefore not excluded under
3 Rule 410. The state court documents repeatedly confirm that
4 defendant pled guilty, as opposed to nolo contendere. His certified
5 change of plea transcript shows that for each of the three charges he
6 answered with the word "guilty" when the court asked how he pled.
7 (Ex. 1 at 6-7.) During the plea colloquy, the court referred to
8 defendant's actions as "pleading guilty." (Ex. 1 at 3 ("Did you
9 note, sir, that one of the consequences of your pleading guilty today
10 could be").) Defendant responded, "Yes, Your Honor," when
11 the court asked, "Did you initial, date, and sign the felony plea
12 form in order to indicate to the Court that not only do you
13 understand your legal and constitutional rights, but that you wish to
14 waive them, **pleading guilty**" to the charged offenses? (Ex. 1 at 4
15 (emphasis added).) The Court also asked, "Do you still wish to waive
16 your legal and constitutional rights in order to **plead guilty** to
17 those counts?" and defendant responded, "Yes, Your Honor." (Ex. 1 at
18 6 (emphasis added).) Even defendant's attorney described defendant's
19 actions as "guilty pleas." (Ex. 1 at 10.)

20 Further, defendant initialed his change of plea form that "No
21 one has made any threats to me or anyone close to me, or placed any
22 pressure of any kind on me **in order to make me plead guilty.**" (Ex. 2
23 at 1 (emphasis added).) He also initialed that he "will enter a
24 **guilty plea**" to three charges and his "**guilty pleas** are conditional
25 on receiving" certain sentencing considerations, which he indeed
26 received. (Ex. 2 at 2 (emphasis added).) He confirmed for the court
27 during his plea colloquy that he "place[d his] initials on the felony
28

1 plea form in order to indicate . . . that [he] understood everything
2 that followed [his] initials." (Ex. 1 at 4.)

3 Further defendant's abstract of judgment notes that the
4 convictions were by "plea" (Ex. 3 at 1) and the criminal minutes for
5 defendant's case note that his pleas to the three charges were "G"
6 and "Guilty" (Ex. 4 at 1, 7). The evidence consistently affirms that
7 defendant pled guilty, such that Rule 410 does not preclude admission
8 of his statements that are otherwise admissible under Rule 801(d)(2).

9 The Court can find comfort that defendant's pleas were guilty
10 pleas by comparing actual nolo contendere pleas in other cases with
11 different defendants. Exhibits 5 and 6 show what state court
12 documents would include if defendant had entered a nolo contendere
13 plea agreement "with the consent of the district attorney." See West
14 3 Cal.3d at 599. For example, in the proceedings in Exhibit 5, when
15 asked how that defendant pleads, he said, "No contest." (Ex. 5 at 4,
16 5.) The Court further confirmed with that defendant--"Do you
17 understand that a plea of no contest has the same legal effect as a
18 plea of guilty except that it cannot be used against you in a civil
19 proceeding?" (Ex. 5 at 4.) Here, defendant did not answer "No
20 contest" to any question at his September 2015 plea colloquy and that
21 court never gave defendant a similar advisement indicating that the
22 pleas were nolo contendere pleas. Indeed, in Exhibit 5, the minutes
23 for that case explicitly say, "nolo contendere," and that the plea
24 was "pursuant to People v. West." (Ex. 5 at 15, 16; see also Ex. 6 at
25 6.) Here, defendant's minutes do not mention West and explicitly use
26 "Guilty" when describing the three pleas. (Ex. 4 at 7.)

27 That defendant's counsel at his September 2015 change of plea
28 hearing made an off-hand comment about "People versus West" does not

1 convert defendant's guilty pleas into a West nolo contendere plea
2 (Ex. 1 at 7), especially in light of the other information in
3 defendant's state court documents (Exs. 1-4) and his state defense
4 counsel's own words that defendant had "guilty pleas" (Ex. 1 at 10).
5 Accordingly, Rule 410 is inapplicable.

6 **D. Revised Statements Comply with Any Rule 403 Balancing**

7 As the Court is well aware, evidence may be excluded under Rule
8 403 "if its probative value is substantially outweighed by a danger
9 of . . . : unfair prejudice, confusing the issues, misleading the
10 jury, undue delay, wasting time, or needlessly presenting cumulative
11 evidence." N.B.'s credibility was a central point in the trial. She
12 was cross examined and the defense put on an affirmative case, some
13 of which was directly responsive to her testimony. Defendant's
14 statements at his plea colloquy are exceedingly probative. Of course
15 they are prejudicial -- all evidence is. See United States v. Ramos-
16 Atondo, 732 F.3d 1113, 1124 (9th Cir. 2013) ("[A]ny evidence that
17 tends to show guilt admitted against a defendant charged with crime
18 may cause prejudice because the relevant evidence of guilt increases
19 the likelihood of a conviction.").

20 The issue is whether the probative value is substantially
21 outweighed by unfair prejudice. To address any such issue, the
22 United States proposes that it be permitted to introduce defendant's
23 statements with non-substantive revisions that remove indication that
24 the statements were part of a guilty plea hearing.

25 Statement 1: The United States proposes changing the combination
26 of defendant's answer of "True," and "Is it true that on or about
27 March 3rd 2012, in the County of Riverside, State of California, you
28 did willfully and unlawfully commit an assault upon Johnny Olivas

1 with a firearm?" (Ex. 1 at 8) with "Defendant has previously admitted
2 that on November 3, 2012, he willfully assaulted his father, Johnny
3 Olivas, with a firearm."

4 Statement 2: The United States proposes changing the combination
5 of defendant's answer of "True," and "Is it also true that on that
6 same date, November 3rd, 2012, in the County of Riverside, State of
7 California, you did willfully and unlawfully inflict a corporal
8 injury resulting in a traumatic condition upon Jane Doe, with the
9 initials N, as in Nancy; B, as in boy, that person being your former
10 cohabitant?" (Ex. 1 at 8), with "Defendant has previously admitted
11 that on November 3, 2012, he willfully inflicted a corporal injury
12 resulting in a traumatic condition on N.B., who lived with him at the
13 time."³

14 Statement 3: The United States proposes changing the combination
15 of defendant's answer of "True," and "And is it also true that on or
16 about March 1st, 2013, through March 31st, 2013, in the County of
17 Riverside, State of California, you did willfully and unlawfully
18 attempt to - or intimidate and dissuade Jane Doe, with the initials
19 N.B., from giving testimony in a criminal proceeding based on the
20 fact that you asked her to not come forward with the information
21 regarding the crimes that you committed against her by threatening to
22 send a text video to her father of sexual acts?" (Ex. 1 at 8-9) with
23 "Defendant has previously admitted that between March 1, 2013, and
24 March 31, 2013, he willfully attempted to and did intimidate and
25 dissuade N.B. from coming forward and giving testimony against him
26 because defendant asked her not to come forward with information
27

28 ³ When introduced at trial, N.B.'s true name would be read into
the record instead of her initials.

1 regarding the acts he committed against her when he threatened to
2 send a text video to her father of sexual acts between defendant and
3 N.B.”

4 With such non-substantive modifications, the core of defendant’s
5 admissions are maintained while stripping them of any unfair
6 prejudice from the potential inference a jury may draw based on the
7 question and answer format that the statements were part of a court
8 proceeding.

9 **IV. CONCLUSION**

10 Because defendant made admissions at his September 2015 plea
11 colloquy which are admissible under Rule 801(d)(2) and not affected
12 by Rule 410, the Court should grant the United States’ motion.
13 Further, the United States should be permitted to introduce
14 defendant’s statements, consistent with Rule 403, in the slightly
15 modified version proposed to avoid any unfair prejudice.